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BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. CC 2010-166

JERRY T. LIN
655 N. Azusa Ave, #189
Azusa, CA 91702
Optometrist License No. 11077

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about February 11, 2013, Complainant Mona C. Maggio, in her official capacity as the Executive Officer of the State Board of Optometry, Department of Consumer Affairs, filed Accusation No. CC 2010-166 against Jerry T. Lin (Respondent) before the State Board of Optometry. (Accusation attached as Exhibit A.)

1 2. On or about August 24, 1998, the State Board of Optometry (Board) issued
2 Optometrist License No. 11077 to Respondent. The Optometrist License expired on September
3 30, 2012, and has not been renewed.

4 3. On or about February 11, 2013, Respondent was served by Certified Mail copies of
5 the Accusation No. CC 2010-166, Statement to Respondent, Notice of Defense, Request for
6 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
7 Respondent's address of record which, pursuant to Business and Professions Code section 3070,
8 is required to be reported and maintained with the Board. Respondent's address of record was
9 and is:

10 655 N. Azusa Ave, #189
11 Azusa, CA 91702.

12 4. Service of the Accusation was effective as a matter of law under the provisions of
13 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
14 124.

15 5. On or about February 19, 2013, the aforementioned documents were returned by the
16 U.S. Postal Service marked "Unclaimed." The address on the documents was the same as the
17 address on file with the Board. Respondent failed to maintain an updated address with the Board
18 and the Board has made attempts to serve the Respondent at the address on file. Respondent has
19 not made himself available for service and therefore, has not availed himself of his right to file a
20 notice of defense and appear at hearing.

21 6. Government Code section 11506 states, in pertinent part:

22 (c) The respondent shall be entitled to a hearing on the merits if the respondent
23 files a notice of defense, and the notice shall be deemed a specific denial of all parts
24 of the accusation not expressly admitted. Failure to file a notice of defense shall
25 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
26 may nevertheless grant a hearing.

27 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
28 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. CC
29 2010-166.

30 8. California Government Code section 11520 states, in pertinent part:

1 (a) If the respondent either fails to file a notice of defense or to appear at the
2 hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

3 9. Pursuant to its authority under Government Code section 11520, the Board finds
4 Respondent is in default. The Board will take action without further hearing and, based on the
5 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
6 taking official notice of all the investigatory reports, exhibits and statements contained therein on
7 file at the Board's offices regarding the allegations contained in Accusation No. CC 2010-166,
8 finds that the charges and allegations in Accusation No. CC 2010-166, are separately and
9 severally, found to be true and correct by clear and convincing evidence.

10 10. Taking official notice of its own internal records, pursuant to Business and
11 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
12 and Enforcement is \$3,587.50 as of March 12, 2013.

13 DETERMINATION OF ISSUES

14 1. Based on the foregoing findings of fact, Respondent Jerry T. Lin has subjected his
15 Optometrist License No. 11077 to discipline.

16 2. The agency has jurisdiction to adjudicate this case by default.

17 3. The State Board of Optometry is authorized to revoke Respondent's Optometrist
18 License based upon the following violations alleged in the Accusation which are supported by the
19 evidence contained in the Default Decision Evidence Packet in this case:

20 a. Respondent is subject to disciplinary action under section 3110 of the Code on the
21 grounds of unprofessional conduct for having violated Code section 810, in that Respondent
22 knowingly presented or caused to be presented a false or fraudulent claim for payment under a
23 contract of insurance and/or knowingly prepared, made, or subscribed a writing with intent to
24 present or use the same, or allow it to be presented or used in support of a false or fraudulent
25 claim.

26 b. Respondent is subject to disciplinary action under section 3105, in conjunction with
27 Section 3110, subdivision (a) and (e), in that Respondent fraudulently submitted bills to VSP.
28

1 c. Respondent is subject to disciplinary action under section 3106, in conjunction with
2 section 3110, in that from on or about January 1, 2007, through on or about April 1, 2008,
3 Respondent fraudulently submitted bills to VSP, necessarily involved knowingly creating
4 paperwork directly related to his practice of optometry that falsely represented facts regarding
5 several of his patients. This constitutes unprofessional conduct within the meaning of Section
6 3106 and provides grounds for disciplinary action under Section 3110, subdivision (e).

7 ORDER

8 IT IS SO ORDERED that Optometrist License No. 11077, heretofore issued to Respondent
9 Jerry T. Lin, is revoked.

10 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
11 written motion requesting that the Decision be vacated and stating the grounds relied on within
12 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
13 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

14 This Decision shall become effective on June 27, 2013.

15 It is so ORDERED May 28, 2013

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19 FOR THE STATE BOARD OF OPTOMETRY
20 DEPARTMENT OF CONSUMER AFFAIRS

21 51258479.DOC
22 DOJ Matter ID: LA2012507930

23 Attachment:
24 Exhibit A: Accusation
25
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27
28

Exhibit A

Accusation

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Attorneys for Complainant

7
8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. CC 2010-166

11 **JERRY T. LIN**
12 655 N. Azusa Ave, #189
13 Azusa, CA 91702

A C C U S A T I O N

14 Optometrist License No. 11077

15 Respondent.

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21 Complainant alleges:

22 **PARTIES**

23 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
24 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

25 2. On or about August 24, 1998, the State Board of Optometry issued Optometrist
26 License Number 11077 to Jerry T. Lin (Respondent). The Optometrist License expired on
27 September 30, 2012, and has not been renewed.
28

JURISDICTION

3. This Accusation is brought before the State Board of Optometry (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b) of the Code states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

4. Section 810 of the Code states:

"(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

"(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

5. Section 3041.1 of the Code states: "With respect to the practices set forth in subdivisions (b), (d), and (e) of Section 3041, optometrists diagnosing or treating eye disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held."

1 6. Section 3105 of the Code states: "Altering or modifying the medical record of any
2 person, with fraudulent intent, or creating any false medical record, with fraudulent intent,
3 constitutes unprofessional conduct. In addition to any other disciplinary action, the State Board of
4 Optometry may impose a civil penalty of five hundred dollars (\$500) for a violation of this
5 section."

6 7. Section 3106 of the Code states: "Knowingly making or signing any certificate or
7 other document directly or indirectly related to the practice of optometry that falsely represents
8 the existence or nonexistence of a state of facts constitutes unprofessional conduct."

9 8. Section 3110 of the Code states:

10 "The board may take action against any licensee who is charged with unprofessional
11 conduct, and may deny an application for a license if the applicant has committed unprofessional
12 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
13 limited to, the following:

14 "(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the
15 violation of, or conspiring to violate any provision of this chapter or any of the rules and
16 regulations adopted by the board pursuant to this chapter.

17 ...

18 "(e) The commission of fraud, misrepresentation, or any act involving dishonesty or
19 corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.

20 "(f) Any action or conduct that would have warranted the denial of a license.

21 ...

22 "(q) The failure to maintain adequate and accurate records relating to the provisions of
23 services to his or her patients.

24 COST RECOVERY

25 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
26 administrative law judge to direct a licensee found to have committed a violation or violations of
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
28 enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-False and Fraudulent Claim)

10. Respondent is subject to disciplinary action under section 3110 of the Code on the grounds of unprofessional conduct for having violated Code section 810, in that Respondent knowingly presented or caused to be presented a false or fraudulent claim for payment under a contract of insurance and/or knowingly prepared, made, or subscribed a writing with intent to present or use the same, or allow it to be presented or used in support of a false or fraudulent claim. The circumstances are as follows:

a. On or about July 28, 2008, VSP¹ conducted an audit at Respondent's office. The audit was initiated because of an anonymous tip received by VSP. The tipster alleged that Respondent was billing VSP, using relatives' names, however, not providing any services. The audit revealed that improper claims were submitted to VSP for payment in the amount of forty seven thousand four hundred eighty two dollars (\$47,482.00).

b. Respondent reimbursed VSP for the improper claims in the entire amount of forty seven thousand four hundred eighty two dollars (\$47,482.00).

c. VSP Senior Fraud Investigator, Jennifer Mahoney, performed the audit at the Respondent's office. Ninety-one (91) patient records were requested at the time of review which included a total of one hundred and ten (110) claim submissions. The audit revealed forty four (44) patient records were missing at the time of review which accounted for fifty-three (53) claims submissions to VSP that were unsubstantiated. Further, nine (9) records contained no documentation to support materials billed and five (5) records did not support the CVC² exam and materials billed.

d. In a Notice of Adverse Action and Restitution Demand dated September 2, 2008, VSP notified Respondent that it was terminating its contract with him, effective at the close of business on December 5, 2008. Further, VSP demanded that Respondent repay the improper claims he had previously submitted to VSP, in the amount of forty seven thousand four hundred

¹ Vision Service Plan

² Computer Vision Correction

1 eighty two dollars (\$47,482.00). VSP advised Respondent that he had the right to request dispute
2 resolution of VSP's noticed Adverse Action and Restitution Demand for restitution in accordance
3 with VSP's Peer Review Plan and Fair Hearing Policy. Accordingly, Respondent requested
4 dispute resolution of VSP's noticed Adverse Action and Restitution Demand.

5 e. On or about January 29, 2009, a hearing was held before VSP's Quality care
6 Committee Hearing Panel ("Hearing Panel"), which concluded that (1) VSP produced evidence in
7 support of its noticed action, and the noticed action was not unreasonable, arbitrary or capricious;
8 (2) VSP's noticed action was made after reasonable investigations, and in the reasonable belief
9 that the noticed action was warranted; (3) The July 2008 review of Respondent's billing practices
10 reflected a pattern of providing VSP with false or misleading information, resulting in VSP
11 overpayment for services and/or materials; (4) VSP's original restitution claim upon the
12 Respondent in the amount of forty seven thousand four hundred eighty two dollars (\$47,482.00)
13 was confirmed, and of which thirty six thousand four hundred ninety four dollars and seven cents
14 (\$36,494.07) had been collected by VSP. The remaining amount of VSP was ten thousand nine
15 hundred eighty seven dollars and ninety three cents (\$10,987.93); (5) Based upon the above
16 stated findings, Respondent did not comply with VSP doctor network participation requirements;
17 (6) Respondent's agreement with VSP was terminated on adequate and timely notice pursuant to
18 Section B, Paragraph 21, of the VSP Network Doctor Agreement.

19 f. On or about February 13, 2009, the Hearing Panel affirmed the VSP Optometry
20 Director's decision to terminate VSP's Network Doctor Agreement with the Respondent,
21 effective close of business on March 24, 2009, and VSP's claim for restitution.

22 g. The Hearing Panel informed the Respondent that his actions leading to VSP's
23 decision may be reportable to appropriate licensing and/or enforcement agencies, as well as the
24 National Practitioner Data Bank pursuant to the Health Care Quality Improvement Act, whether
25 or not required by law, if those actions created an actual or potential risk of imminent danger to
26 the health of any individual or if VSP determines that other reasonable cause exists.

27 h. The Hearing Panel further informed the Respondent that he had the right to request
28 arbitration of the Hearing Panel's Decision. Respondent requested arbitration, however, on

1 August 27, 2009, he decided not to proceed with the arbitration process, and he accepted VSP's
2 final decision. On September 2, 2009, Richard Gilbert, the designated "Arbitrator" issued his
3 Order dismissing Respondent's Appeal from the determination of VSP dated September 2, 2008
4 and affirming VSP determination removing the Respondent from the VSP list of network doctors.

5 i. The Board's investigator made several attempts to contact the Respondent to no avail.

6 11. Incorporating by reference the allegations in paragraph 10, Respondent's conduct in
7 knowingly presenting false and fraudulent claims to VSP for payment constitutes unprofessional
8 conduct within the meaning of Code sections 810 (a)(1) and 810(a)(2) and provides grounds for
9 disciplinary action under Code section 3110, subdivisions (a), (e) and (f).

10 SECOND CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct-Alteration of Medical Records)

12 12. Respondent is subject to disciplinary action under section 3105, in conjunction with
13 Section 3110, subdivision (a) and (e), in that Respondent fraudulently submitted bills to VSP.

14 13. Incorporating by reference the allegations in paragraphs 10 through 11, Respondent's
15 conduct, in fraudulently submitting bills to VSP, necessarily involved altering, modifying and/or
16 omitting information in the medical records of some of his patients with fraudulent intent and
17 creating a false medical record with fraudulent intent. This conduct constitutes unprofessional
18 conduct within the meaning of Code section 3105 and provides grounds for disciplinary action
19 under Code section 3110.

20 THIRD CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct-False Representation of Facts)

22 14. Respondent is subject to disciplinary action under section 3106, in conjunction with
23 section 3110, in that from on or about January 1, 2007, through on or about April 1, 2008,
24 Respondent fraudulently submitted bills to VSP, necessarily involved knowingly creating
25 paperwork directly related to his practice of optometry that falsely represented facts regarding
26 several of his patients. This constitutes unprofessional conduct within the meaning of Section
27 3106 and provides grounds for disciplinary action under Section 3110, subdivision (e).

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the State Board of Optometry issue a decision:

1. Revoking or suspending Optometrist License Number 11077, issued to Jerry T. Lin;

2. Ordering Jerry T. Lin to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: February 4, 2013


MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

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